

AN ACT concerning regulation.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Illinois Underground Utility Facilities Damage Prevention Act is amended by changing Sections 2, 2.2, 2.3, 4, 6, 10, and 11 and by adding Sections 2.9, 2.10, and 2.11 as follows:

(220 ILCS 50/2) (from Ch. 111 2/3, par. 1602)

Sec. 2. Definitions. As used in this Act, unless the context clearly otherwise requires, the terms specified in Sections 2.1 through 2.11 ~~2.8~~ have the meanings ascribed to them in those Sections.

(Source: P.A. 92-179, eff. 7-1-02.)

(220 ILCS 50/2.2) (from Ch. 111 2/3, par. 1602.2)

Sec. 2.2. Underground utility facilities. "Underground utility facilities" or "facilities" means and includes wires, ducts, fiber optic cable, conduits, pipes, sewers, and cables and their connected appurtenances installed beneath the surface of the ground by a public utility (as is defined in the Illinois Public Utilities Act, as amended), or by a municipally owned or mutually owned utility providing a similar utility service, except an electric cooperative as defined in the Illinois Public Utilities Act, as amended, or by a pipeline entity transporting gases, crude oil, petroleum products, or other hydrocarbon materials within the State, or by a telecommunications carrier as defined in the Universal Telephone Service Protection Law of 1985, or by a company described in Section 1 of "An Act relating to the powers, duties and property of telephone companies", approved May 16, 1903, as amended, or by a community antenna television system, hereinafter referred to as "CATS", as defined in the Illinois

Municipal Code, as amended.

(Source: P.A. 92-179, eff. 7-1-02.)

(220 ILCS 50/2.3) (from Ch. 111 2/3, par. 1602.3)

Sec. 2.3. Excavation. "Excavation" means any operation in which earth, rock, or other material in or on the ground is moved, removed, or otherwise displaced by means of any tools, power equipment or explosives, and includes, without limitation, grading, trenching, digging, ditching, drilling, augering, boring, tunneling, scraping, cable or pipe plowing, and driving but does not include farm tillage operations or railroad right-of-way maintenance or operations or coal mining operations regulated under the Federal Surface Mining Control and Reclamation Act of 1977 or any State law or rules or regulations adopted under the federal statute, or land surveying operations as defined in the Illinois Professional Land Surveyor Act of 1989 when not using power equipment, or roadway surface milling.

(Source: P.A. 92-179, eff. 7-1-02.)

(220 ILCS 50/2.9 new)

Sec. 2.9. "Forty-eight hours" means 2 business days beginning at 8 a.m. and ending at 4 p.m. (exclusive of Saturdays, Sundays, and holidays recognized by the State-Wide One-Call Notice System or the municipal one-call notice system). All requests for locates received after 4 p.m. will be processed as if received at 8 a.m. the next business day.

(220 ILCS 50/2.10 new)

Sec. 2.10. "Open cut utility locate" means a method of locating underground utility facilities that requires excavation by the owner, operator, or agent of the underground facility.

(220 ILCS 50/2.11 new)

Sec. 2.11. "Roadway surface milling" means the removal of a

uniform pavement section by rotomilling, grinding, or other means not including the base or subbase.

(220 ILCS 50/4) (from Ch. 111 2/3, par. 1604)

Sec. 4. Required activities. Every person who engages in nonemergency excavation or demolition shall:

(a) take reasonable action to inform himself of the location of any underground utility facilities or CATS facilities in and near the area for which such operation is to be conducted;

(b) plan the excavation or demolition to avoid or minimize interference with underground utility facilities or CATS facilities within the tolerance zone by utilizing such precautions that include, but are not limited to, hand excavation, vacuum excavation methods, and visually inspecting the excavation while in progress until clear of the existing marked facility;

(c) if practical, use white paint, flags, stakes, or both, to outline the dig site;

(d) provide notice not less than 48 hours ~~(exclusive of Saturdays, Sundays and holidays)~~ but no more than 14 calendar days in advance of the start of the excavation or demolition to the owners or operators of the underground utility facilities or CATS facilities in and near the excavation or demolition area through the State-Wide One-Call Notice System or, in the case of nonemergency excavation or demolition within the boundaries of a municipality of at least one million persons which operates its own one-call notice system, through the one-call notice system which operates in that municipality;

(e) provide, during and following excavation or demolition, such support for existing underground utility facilities or CATS facilities in and near the excavation or demolition area as may be reasonably necessary for the protection of such facilities unless otherwise agreed to by the owner or operator of the underground facility or CATS facility;

(f) backfill all excavations in such manner and with such

materials as may be reasonably necessary for the protection of existing underground utility facilities or CATS facilities in and near the excavation or demolition area; and

(g) After February 29, 2004, when the excavation or demolition project will extend past 28 calendar days from the date of the original notice provided under clause (d), the excavator shall provide a subsequent notice to the owners or operators of the underground utility facilities or CATS facilities in and near the excavation or demolition area through the State-Wide One-Call Notice System or, in the case of excavation or demolition within the boundaries of a municipality having a population of at least 1,000,000 inhabitants that operates its own one-call notice system, through the one-call notice system that operates in that municipality informing utility owners and operators that additional time to complete the excavation or demolition project will be required. The notice will provide the excavator with an additional 28 calendar days from the date of the subsequent notification to continue or complete the excavation or demolition project.

At a minimum, the notice required under clause (d) shall provide:

(1) the person's name, address, and (i) phone number at which a person can be reached and (ii) fax number, if available;

(2) the start date of the planned excavation or demolition;

(3) the address at which the excavation or demolition will take place;

(4) the type and extent of the work involved; and

(5) section/quarter sections when the above information does not allow the State-Wide One-Call Notice System to determine the appropriate geographic section/quarter sections. This item (5) does not apply to residential property owners.

Nothing in this Section prohibits the use of any method of

excavation if conducted in a manner that would avoid interference with underground utility facilities or CATS facilities.

(Source: P.A. 92-179, eff. 7-1-02; 93-430, eff. 8-5-03.)

(220 ILCS 50/6) (from Ch. 111 2/3, par. 1606)

Sec. 6. Emergency excavation or demolition.

(a) Every person who engages in emergency excavation or demolition outside of the boundaries of a municipality of at least one million persons which operates its own one-call notice system shall take all reasonable precautions to avoid or minimize interference between the emergency work and existing underground utility facilities or CATS facilities in and near the excavation or demolition area, through the State-Wide One-Call Notice System, and shall notify, as far in advance as possible, the owners or operators of such underground utility facilities or CATS facilities in and near the emergency excavation or demolition area, through the State-Wide One-Call Notice System. At a minimum, the notice required under this subsection (a) shall provide:

(1) the person's name, address, and (i) phone number at which a person can be reached and (ii) fax number, if available;

(2) the start date of the planned emergency excavation or demolition;

(3) the address at which the excavation or demolition will take place; and

(4) the type and extent of the work involved.

There is a wait time of 2 hours or the date and time requested on the notice, whichever is longer, A 2-hour wait time exists after an emergency locate notification request is made through the State-Wide One-Call Notice System. If the conditions at the site dictate an earlier start than the required 2-hour wait time, it is the responsibility of the excavator to demonstrate that site conditions warranted this earlier start time.

Upon notice by the person engaged in emergency excavation or demolition, the owner or operator of an underground utility facility or CATS facility in or near the excavation or demolition area shall communicate with the person engaged in emergency excavation or demolition within 2 hours or by the date and time requested on the notice, whichever is longer.

The notice by the owner or operator to the person engaged in emergency excavation or demolition may be provided by phone or phone message or by marking the excavation or demolition area. The owner or operator has discharged the owner's or operator's obligation to provide notice under this Section if the owner or operator attempts to provide notice by telephone but is unable to do so because the person engaged in the emergency excavation or demolition does not answer his or her telephone or does not have an answering machine or answering service to receive the telephone call. If the owner or operator attempts to provide notice by telephone or by facsimile but receives a busy signal, that attempt shall not discharge the owner or operator from the obligation to provide notice under this Section.

(b) Every person who engages in emergency excavation or demolition within the boundaries of a municipality of at least one million persons which operates its own one-call notice system shall take all reasonable precautions to avoid or minimize interference between the emergency work and existing underground utility facilities or CATS facilities in and near the excavation or demolition area, through the municipality's one-call notice system, and shall notify, as far in advance as possible, the owners and operators of underground utility facilities or CATS facilities in and near the emergency excavation or demolition area, through the municipality's one-call notice system.

(c) The reinstallation of traffic control devices shall be deemed an emergency for purposes of this Section.

(d) An open cut utility locate shall be deemed an emergency for purposes of this Section.

(Source: P.A. 92-179, eff. 7-1-02.)

(220 ILCS 50/10) (from Ch. 111 2/3, par. 1610)

Sec. 10. Record of notice; marking of facilities. Upon notice by the person engaged in excavation or demolition, the person owning or operating underground utility facilities or CATS facilities in or near the excavation or demolition area shall cause a written record to be made of the notice and shall mark, within 48 hours ~~(excluding Saturdays, Sundays and holidays)~~ of receipt of notice, the approximate locations of such facilities so as to enable the person excavating or demolishing to establish the location of the underground utility facilities or CATS facilities. Owners and operators of underground sewer facilities that are located outside the boundaries of a municipality having a population of at least 1,000,000 inhabitants shall be required to respond and mark the approximate location of those sewer facilities when the excavator indicates, in the notice required in Section 4, that the excavation or demolition project will exceed a depth of 7 feet. "Depth", in this case, is defined as the distance measured vertically from the surface of the ground to the top of the sewer facility. Owners and operators of underground sewer facilities that are located outside the boundaries of a municipality having a population of at least 1,000,000 inhabitants shall be required at all times to locate the approximate location of those sewer facilities when: (1) directional boring is the indicated type of excavation work being performed within the notice; (2) the underground sewer facilities owned are non-gravity, pressurized force mains; or (3) the excavation indicated will occur in the immediate proximity of known underground sewer facilities that are less than 7 feet deep. Owners or operators of underground sewer facilities that are located outside the boundaries of a municipality having a population of at least 1,000,000 inhabitants shall not hold an excavator liable for damages that occur to sewer facilities that were not required to be marked

under this Section, provided that prompt notice of the damage is made to the State-Wide One-Call Notice System and the utility owner as required in Section 7.

All persons subject to the requirements of this Act shall plan and conduct their work consistent with reasonable business practices. Conditions may exist making it unreasonable to request that locations be marked within 48 hours. It is unreasonable to request owners and operators of underground utility facilities and CATS facilities to locate all of their facilities in an affected area upon short notice in advance of a large or extensive nonemergency project, or to request extensive locates in excess of a reasonable excavation or demolition work schedule, or to request locates under conditions where a repeat request is likely to be made because of the passage of time or adverse job conditions. Owners and operators of underground utility facilities and CATS facilities must reasonably anticipate seasonal fluctuations in the number of locate requests and staff accordingly.

If a person owning or operating underground utility facilities or CATS facilities receives a notice under this Section but does not own or operate any underground utility facilities or CATS facilities within the proposed excavation or demolition area described in the notice, that person, within 48 hours ~~(excluding Saturdays, Sundays, and holidays)~~ after receipt of the notice, shall so notify the person engaged in excavation or demolition who initiated the notice, unless the person who initiated the notice expressly waives the right to be notified that no facilities are located within the excavation or demolition area. The notification by the owner or operator of underground utility facilities or CATS facilities to the person engaged in excavation or demolition may be provided in any reasonable manner including, but not limited to, notification in any one of the following ways: by face-to-face communication; by phone or phone message; by facsimile; by posting in the excavation or demolition area; or by marking the excavation or demolition area. The owner or

operator of those facilities has discharged the owner's or operator's obligation to provide notice under this Section if the owner or operator attempts to provide notice by telephone or by facsimile, if the person has supplied a facsimile number, but is unable to do so because the person engaged in the excavation or demolition does not answer his or her telephone or does not have an answering machine or answering service to receive the telephone call or does not have a facsimile machine in operation to receive the facsimile transmission. If the owner or operator attempts to provide notice by telephone or by facsimile but receives a busy signal, that attempt shall not serve to discharge the owner or operator of the obligation to provide notice under this Section.

A person engaged in excavation or demolition may expressly waive the right to notification from the owner or operator of underground utility facilities or CATS facilities that the owner or operator has no facilities located in the proposed excavation or demolition area. Waiver of notice is only permissible in the case of regular or nonemergency locate requests. The waiver must be made at the time of the notice to the State-Wide One-Call Notice System. A waiver made under this Section is not admissible as evidence in any criminal or civil action that may arise out of, or is in any way related to, the excavation or demolition that is the subject of the waiver.

For the purposes of this Act, underground facility operators may utilize a combination of flags, stakes, and paint when possible on non-paved surfaces and when dig site and seasonal conditions warrant. If the approximate location of an underground utility facility or CATS facility is marked with stakes or other physical means, the following color coding shall be employed:

<u>Underground Facility</u>	Utility or	Identification Color
Community Antenna		
Television Systems and Type		
of Product		

Facility Owner or Agent Use Only

Electric Power, Distribution and

- Transmission Safety Red
- Municipal Electric Systems Safety Red
- Gas Distribution and Transmission High Visibility
Safety Yellow
- Oil Distribution and Transmission High Visibility
Safety Yellow
- Telephone and Telegraph Systems Safety Alert Orange
- Community Antenna Television Systems .. Safety Alert Orange
- Water Systems Safety
Precaution Blue
- Sewer Systems Safety Green
- Non-potable Water and Slurry Lines Safety Purple

Excavator Use Only

- Temporary Survey Safety Pink
- Proposed Excavation Safety White (Black
when snow is
on the ground)

(Source: P.A. 92-179, eff. 7-1-02; 93-430, eff. 8-5-03.)

(220 ILCS 50/11) (from Ch. 111 2/3, par. 1611)

Sec. 11. Penalties; liability; fund.

(a) Every person who, while engaging in excavation or demolition, wilfully fails to comply with the Act by failing to provide the notice to the owners or operators of the underground facilities or CATS facility near the excavation or demolition area through the State-Wide One-Call Notice System as required by Section 4 or 6 of this Act shall be subject to a penalty of up to \$5,000 for each separate offense and shall be liable for the damage caused to the owners or operators of the facility.

(b) Every person who, while engaging in excavation or demolition, has provided the notice to the owners or operators of the underground utility facilities or CATS facilities in and

near the excavation or demolition area through the State-Wide One-Call Notice System as required by Section 4 or 6 of this Act, but otherwise wilfully fails to comply with this Act, shall be subject to a penalty of up to \$2,500 for each separate offense and shall be liable for the damage caused to the owners or operators of the facility.

(c) Every person who, while engaging in excavation or demolition, has provided the notice to the owners or operators of the underground utility facilities or CATS facilities in and near the excavation or demolition area through the State-Wide One-Call Notice System as required by Section 4 or 6 of this Act, but otherwise, while acting reasonably, damages any underground utility facilities or CATS facilities, shall not be subject to a penalty, but shall be liable for the damage caused to the owners or operators of the facility provided the underground utility facility or CATS facility is properly marked as provided in Section 10 of this Act.

(d) Every person who, while engaging in excavation or demolition, provides notice to the owners or operators of the underground utility facilities or CATS facilities through the State-Wide One-Call Notice System as an emergency locate request and the locate request is not an emergency locate request as defined in Section 2.6 of this Act shall be subject to a penalty of up to \$2,500 for each separate offense.

(e) Owners and operators of underground utility facilities or CATS facilities (i) who wilfully fail to comply with this Act by a failure to mark the location of an underground utility or CATS facility or a failure to provide notice that facilities are not within the proposed excavation or demolition area as required in Section 10, or (ii) who willfully fail to respond as required in Section 6 to an emergency request, after being notified of planned excavation or demolition through the State-Wide One-Call Notice System, shall be subject to a penalty of up to \$5,000 for each separate offense resulting from the failure to mark an underground utility facility or CATS facility.

(f) As provided in Section 3 of this Act, all owners or operators of underground utility facilities or CATS facilities who fail to join the State-Wide One-Call Notice System by January 1, 2003 shall be subject to a penalty of \$100 per day for each separate offense. Every day an owner or operator fails to join the State-Wide One-Call Notice System is a separate offense. This subsection (f) does not apply to utilities operating facilities or CATS facilities exclusively within the boundaries of a municipality with a population of at least 1,000,000 persons.

(g) No owner or operator of underground utility facilities or CATS facilities shall be subject to a penalty where a delay in marking or a failure to mark or properly mark the location of an underground utility or CATS facility is caused by conditions beyond the reasonable control of such owner or operator.

(h) Any person who is neither an agent, employee, or authorized locating contractor of the owner or operator of the underground utility facility or CATS facility nor an excavator involved in the excavation activity who removes, alters, or otherwise damages markings, flags, or stakes used to mark the location of an underground utility or CATS facility other than during the course of the excavation for which the markings were made or before completion of the project shall be subject to a penalty up to \$1,000 for each separate offense.

(i) The excavator shall exercise due care at all times to protect underground utility facilities and CATS facilities. If, after proper notification through the State-Wide One-Call Notice System and upon arrival at the site of a proposed excavation, the excavator observes clear evidence of the presence of an unmarked utility or CATS facility in the area of the proposed excavation, the excavator shall not begin excavating until 2 hours after an additional call is made to the State-Wide One-Call Notice System for the area. The operator of the utility or CATS facility shall respond within 2 hours of the excavator's call to the State-Wide One-Call Notice

System.

(j) The Illinois Commerce Commission shall have the power and jurisdiction to, and shall, enforce the provisions of this Act. The Illinois Commerce Commission may impose administrative penalties as provided in this Section. The Illinois Commerce Commission may promulgate rules and develop enforcement policies in the manner provided by the Public Utilities Act in order to implement compliance with this Act. When a penalty is warranted, the following criteria shall be used in determining the magnitude of the penalty:

- (1) gravity of noncompliance;
- (2) culpability of offender;
- (3) history of noncompliance for the 18 months prior to the date of the incident;
- (4) ability to pay penalty;
- (5) show of good faith of offender;
- (6) ability to continue business; and
- (7) other special circumstances.

(k) There is hereby created in the State treasury a special fund to be known as the Illinois Underground Utility Facilities Damage Prevention Fund. All penalties recovered in any action under this Section shall be paid into the Fund and shall be distributed annually as a grant to the State-Wide One-Call Notice System to be used in safety and informational programs to reduce the number of incidents of damage to underground utility facilities and CATS facilities in Illinois. The distribution shall be made during January of each calendar year based on the balance in the Illinois Underground Utility Facilities Damage Prevention Fund as of December 31 of the previous calendar year. In all such actions under this Section, the procedure and rules of evidence shall conform with the Code of Civil Procedure, and with rules of courts governing civil trials.

(l) The Illinois Commerce Commission shall establish an Advisory Committee consisting of a representative from each of the following: utility operator, JULIE, excavator,

municipality, and the general public. The Advisory Committee shall serve as a peer review panel for any contested penalties resulting from the enforcement of this Act.

The members of the Advisory Committee shall be immune, individually and jointly, from civil liability for any act or omission done or made in performance of their duties while serving as members of such Advisory Committee, unless the act or omission was the result of willful and wanton misconduct.

(m) If, after the Advisory Committee has considered a particular contested penalty and performed its review functions under this Act and the Commission's rules, there remains a dispute as to whether the Commission should impose a penalty under this Act, the matter shall proceed in the manner set forth in Article X of the Public Utilities Act, including the provisions governing judicial review.

(Source: P.A. 92-179, eff. 7-1-02.)

Section 99. Effective date. This Act takes effect upon becoming law.